

**REMARKS**

Favorable consideration of the present application is respectfully requested.

Claims 1, 2, 5-9, and 12-21 are currently pending. Claims 1 and 19 have been amended. Claim 3, 4, 10 and 11 have been canceled by this Amendment. Applicants believe that the claims, as now presented, are clearly allowable.

The Examiner objected to an informality in line 3 of Claim 1 and required correction of “what” to “when”. Applicants have made the required correction to overcome the objection and respectfully request that the objection be withdrawn.

Claims 19-21 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants have amended the claims to overcome the § 112, second paragraph, rejections and respectfully request that the Examiner formally withdraw the rejection.

Claims 1-7, 10-14, and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by Acker (“Acker”) (U.S. Patent No. 4,366,806). Applicants have amended Claims 1 and 19, to incorporate the features of previous Claims 3 and 4 (both now canceled), to overcome the rejection.

Regarding Claim 1, Claim 1 now recites:

“A floating water surface cover module for a water storage tailings facility comprising a rim portion and a cover portion, a plurality of air-filled buoyancy pockets spaced around the rim portion and associated with the rim and/or the cover portion for giving buoyancy to the module when in use such that the rim portion is substantially submerged in the water, said cover portion being configured to define an air space above the water when in use, said rim and/or cover portion being configured to allow the module to be nested within and stacked with like modules for storage or transportation and each pocket is configured to nest in a corresponding indentation in the cover portion and/or rim portion of a like module when the modules are stacked and each pocket in the cover and rim portions is an open pocket adapted to be closed by a lid fixed to the cover and rim portions to define a closed air-filled pocket.” (Underscore added by Applicants.)

Contrary to the Examiner's assertion, the buoyancy pockets denoted by reference numerals 22, 32 and 44 in Acker do not disclose the same air-filled buoyancy pockets as recited in Claim 1. Specifically, Acker discloses a stackable soluble pool heater that is formed with a thin membrane cover for maximizing heat transfer through the membrane to underlying pool water to heat a pool. In fact, the membrane is so thin that reinforcing portions are required to prevent the membrane from collapsing. This is described in Acker in column 4, line 61 to 66, where the reinforcement is described as ribs or troughs 22 that "serve as stiffening means to aid the membrane in retaining and returning to the configuration illustrated" in Figures 3 and 6. However, nothing in Acker indicates that the ribs or troughs 22 provide any floatation capability. Rather, the solid pool heater incorporates foam strips 28 for flotation. The foam strips 28 and the troughs 22 do not comprise air-filled buoyancy pockets as recited in claims 1 and 19. Also contrary to the Examiner's assertions, neither of channel 32 nor trough 44 are a closed air-filled pocket. Channel 32 is designed to take in water (*see*, Column 5, lines 45-48) and trough 44 is merely an open trough that can trap air when inverted and placed on the water that has partial or full ends to prevent any trapped air from escaping, but does not have a top to prevent air and/or water from entering and/or escaping (*see*, Column 6, lines 10-13).

The Examiner has incorrectly interpreted the limitations "each pocket is configured to nest in a corresponding indentation in the cover portion and/or rim portion of a like module when the modules are stacked" and "adapted to be closed by a lid fixed to the cover and rim portions to define a closed air-filled pocket" as merely intended use statements. In fact, each recitation positively recites actual additional structural characteristics of each pocket that are individually separate and apart from any possible

intended use language that the Examiner may believe is present. Specifically, the pocket must be shaped in such a way as to nest in a corresponding indentation and include a lid that when closed creates the closed air-filled pocket. Nothing in Acker discloses either of these features of Claim 1.

Therefore, because Acker does not disclose all of the elements recited in Claim 1, the § 102(b) rejection of Claim 1 and Claims 2, 5-7 and 12-14 that depend therefrom, is believed to be overcome. Accordingly, Applicants respectfully request the Examiner to formally withdraw the Section 102 rejection of Claims 1, 2, 5-7 and 12-14.

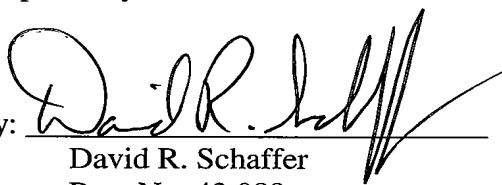
Regarding Claim 19, which has been amended similar to Claim 1, for at least those reasons given above for Claim 1, because Acker does not disclose all of the elements recited in Claim 19, the § 102(b) rejection of Claim 19 and Claims 20 and 21 that depend therefrom, is believed to be overcome. Accordingly, Applicants respectfully request the Examiner to formally withdraw the Section 102 rejection of Claims 1-21.

Claims 8, 9, 15-18, 20 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Acker. Applicants have amended Claims 1 and 19 to overcome the § 102(b) rejection, as noted above. Therefore, for at least those reasons given above for Claims 1 and 19, the Section 103 rejection of Claims 8, 9, 15-18, 20 and 21 is believed to be overcome. Accordingly, the Examiner is respectfully requested to formally withdraw the section 103(a) rejection of Claims 8, 9, 15-18, 20 and 21.

Applicants believe that all currently pending Claims are now allowable and respectfully request that the Examiner issue a notice to that effect. However, should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2211-12006US01) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

By:   
David R. Schaffer  
Reg. No. 43,089

Date: June 19, 2008

Miles & Stockbridge, P.C.  
1751 Pinnacle Drive  
Suite 500  
McLean, Virginia 22102-3833  
(703) 903-9000